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**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

BRISTOL BAY ECONOMIC DEVELOPMENT
CORPORATION, *et al.*,

Plaintiffs,

v.

CHRIS HLADICK
U.S. Environmental Protection Agency, *et al.*,

Defendants.

Case No. 3:19-cv-00265-SLG

SALMONSTATE, *et al.*,

Plaintiffs,

v.

CHRIS HLADICK,

Case No. 3:19-cv-00267-SLG

U.S. Environmental Protection Agency, *et al.*,
Defendants.

TROUT UNLIMITED,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants.

Case No. 3:19-cv-00268-SLG

**PLAINTIFFS' JOINT MOTION TO EXPEDITE CONSIDERATION OF
PLAINTIFFS' MOTION TO LIFT STAY UNDER MISCELLANEOUS GENERAL
ORDER NO. 20-11**

Plaintiffs Bristol Bay Economic Development Council, *et al.* move the Court to expedite consideration of Plaintiffs' Motion to Lift Stay Under Miscellaneous General Order No. 20-11, Doc. 65, pursuant to Local Rule 7.3(a). The Environmental Protection Agency (EPA) takes no position on this motion and the State opposes this motion. *See* Declaration of Brian Litmans in Support of Plaintiffs' Motions to Lift Stay and Expedite Consideration at ¶¶ 5–7 (filed contemporaneously with this motion).

I. STATEMENT OF RELEVANT FACTS

Plaintiffs challenge EPA's withdrawal of its Proposed Determination under Section 404(c) of the Clean Water Act. While in place, the Proposed Determination

prevented the Army Corps of Engineers (the Corps) from issuing a Section 404 permit for the proposed Pebble Mine in the headwaters of Bristol Bay. *See generally* Doc. 1.

Notwithstanding the claims raised in this case, the Corps is continuing its permitting process. In late March, the Corps announced that it plans on releasing its Final Environmental Impact Statement (FEIS) in mid-June with a Record of Decision (ROD) to be issued approximately 60 days later. *See* Declaration of Wesley James Furlong in Support of Plaintiffs’ Motion to Lift Stay at ¶¶ 3, 5–8, 10.¹

Plaintiffs raised the Corps’ permitting schedule in their Joint Opening Summary Judgment Brief, noting that “[t]he Corps has stated that it anticipates issuing a decision on [Pebble Limited Partnership’s] permit application in the fall of 2020 although it has not updated its project website.” Doc. 48 at 33, *citing* Doc. 40 at 3 n.2. The Corps remains on schedule. It could issue a decision as soon as mid-July, although it has advised cooperating agencies that it will issue a decision approximately 60 days after it completes its FEIS. *See* Furlong Declaration at ¶ 8. Under this schedule, the Corps would issue its ROD in mid-August.

Plaintiffs’ requested remedy — vacating the withdrawal of the Proposed Determination — has significant legal ramifications on the Section 404 permitting process. The Proposed Determination precludes the Corps from issuing a Section 404

¹ Pursuant to the National Environmental Policy Act’s implementing regulations, the Corps can issue a ROD thirty days or later from the date the FEIS is noticed in the Federal Register. 40 C.F.R. § 1506.10(b)(2).

permit to Pebble Limited Partnership (PLP). *See* 33 C.F.R. § 323.6(b). Should the Corps issue its Section 404 permit prior to this Court addressing the merits, Plaintiffs’ relief will be significantly prejudiced and lack the legal impact a Section 404(c) process is intended to have on the Corps permitting process. Plaintiffs have therefore consistently sought to move this case along as expeditiously as possible, to ensure the Court has time to rule before the Corps issues a Section 404 permit to PLP. *See, e.g.*, Doc. 23 at 4 (requesting a ruling by May 1, 2020). When the State of Alaska (State) moved to intervene in the case on February 7, 2020, Plaintiffs did not oppose “so long as intervention does not delay the resolution of this time-sensitive case.” Doc. 54 at 5. In granting intervention, this Court ordered the State to submit its Opening Merits Brief “no later than **March 31, 2020**,” and Plaintiffs’ to submit their Joint Reply Brief by April 14, 2020, two weeks later. Doc. 56 at 2.

However, pursuant to Miscellaneous General Order No. 20-11 (MGO 20-11), issued on March 30, 2020, this Court stayed all civil cases for 30 days unless otherwise ordered by the presiding judge in each specific case. MGO 20-11 at B.1. In addition to staying any hearings until after May 1, 2020, the District Court stayed all filing deadlines, pending further order of the assigned judge. MGO 20-11 at B.5. Upon receiving this order, Plaintiffs reached out to the State asking whether the State still planned to file its brief on March 31, 2020. *See* Decl. of Brian Litmans at ¶ 2; *see also* Exhibit A to Litmans Decl. at 4. The State initially responded that it was not planning to file on the 31st of

March, but that it could file by April 6, 2020. *See* Decl. of Brian Litmans at ¶ 3; *see also* Exhibit A to Litmans Decl. at 2. Soon thereafter, however, the State changed course and advised that it did *not* plan to file a brief until the Court’s stay under MGO 20-11 was lifted. *See* Decl. of Brian Litmans at ¶¶ 4–5; *see also* Exhibit A to Litmans Decl. at 1–2. Such delay would be detrimental to this time-sensitive case, jeopardizing this Court’s ability to rule before the Corps issues a ROD as early as mid-July.

II. THE COURT SHOULD EXPEDITE PLAINTIFFS’ MOTION TO LIFT STAY UNDER MISCELLANEOUS GENERAL ORDER NO. 20-11

Because of the impending Corps permit decision, time is of the essence in this case. Should Plaintiffs succeed in this action to reinstate the Proposed Determination, the Corps would be unable to issue a permit until and unless EPA lawfully determines that such a permit would not subject the Bristol Bay watershed to unacceptable adverse effects. To ensure that this court is able to rule prior to a Corps permitting decision, it is essential that briefing continue as expeditiously as possible under the circumstances. This time pressure provides good cause for expedited consideration of Plaintiffs’ Joint Motion to Lift Stay Under MGO 20-11. Per Local Rule 7.3(a), plaintiffs have made a good faith effort to find resolution with the State prior to submitting this motion. Decl. of Brian Litmans at ¶¶ 2–6. The State has indicated that it will try to respond to Plaintiffs’ Motion to Lift Stay by April 8, 2020. Decl. of Brian Litmans at ¶ 6. Plaintiffs therefore respectfully request that this Court expedite consideration of and rule on Plaintiffs’ Joint Motion to Lift Stay Under MGO 20-11 by April 13, 2020.

Respectfully submitted on this 6th day of April, 2020.

s/ Jeffrey M. Feldman

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s/ Brian Litmans

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2020, I filed foregoing **PLAINTIFFS' JOINT MOTION TO EXPEDITE CONSIDERATION OF PLAINTIFFS' JOINT MOTION TO LIFT STAY** using the Court's CM/ECF system, which serves copies on counsel of record.

/s/ Brian Litmans